IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7729 OF 2005

John Paul Ikene Applicant

versus

The State of Maharashtra Respondent

Mr.Anil Lalla i/by Lalla & Lalla for applicant.

Mr.S.V.Saste, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th December 2005

PC :

1. This is an application for bail in a matter where the offence is registered under the NDPS Act..

2. The original accused no.1 preferred an application for bail before the Special Judge being Application No.160 of 2005. An order was passed thereon on 16th November 2005.

3. Shri Lalla - learned advocate appearing for the applicant states that the learned Judge has denied bail to the applicant only because the

applicant is not a citizen of India. He states that as far as this aspect is concerned, neither in the provisions contained in the NDPS Act and more particularly Section 37 thereof, nor under Code of Criminal Procedure, 1973, is there any prohibition for enlarging the applicants who are foreign nationals on bail. He submits that the mandate of Articles 14 and 21 of the Constitution of India is clear. The said Articles apply to persons and the word "person" would include in its import such person who is not an Indian National or citizen. In these circumstances, the order passed by the Trial Court should be set aside and the applicant be enlarged on bail. Moreso, when the requirement of Section 37(1)(b)(ii) has also not complied with. The Court below has clearly observed that recovery of Cockine is not commercial quantity.

4. Shri Saste, on the other hand, appearing for the prosecution states that the learned Judge in order to satisfy himself about the mandatory requirements stipulated u/s 37(1)(b)(ii), could not have proceeded on the footing that merely because recovery is not a commercial quantity that the applicant deserves to be enlarged on bail. In that behalf, he invites my attention to

the provisions contained in Sections 8(c), 20(b) and 21(b) and submits that although in relation to Cannabis Plants and Cannabis as well as manufactured products and preparations the punishment is for contravention of the provisions of the Act, Rule, Order of Condition of licence and whoever contravenes the same shall be punishable, where the contravention involves quantity lesser than the commercial quantity but greater than small quantity, with R.I. for a term which may extent to 10 years and fine which may extend to Rs.1.00 lakh. He submits that unless and until the Court is satisfied about contravention and the punishment, prima facie, the provisions contained in Section 37 would not be attracted. In these circumstances, there is no question of considering an application for enlargement on bail.

5. In my view, all these aspects have either not been placed or not noticed by the learned Judge while dealing with the bail application. Shri Lalla would invite me to go into them. However, I am of the view that interest of justice would be served if both the applicant as well as the prosecution have an opportunity to place forward their pleas before the Special Judge, NDPS

Special Court, Greater Bombay. The appropriate course would be to quash the order passed on 16th November 2005 and restore the bail application to its file. Accordingly, Bail Application No.160/2005 in NDPS Special Case No.114/2005 is restored to the file of Special Judge, NDPS Act, Greater Bombay for disposal afresh on merits and in accordance with law.

6. Learned Judge shall give an opportunity to the applicant as well as prosecution to place all such materials as are permissible in law, in support of their contentions, and pass an order without being influenced by the observations and findings in his earlier order. All contentions of both sides are kept open for being agitated before the Trial Court.

(S.C.DHARMADHIKARI, J.)